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File:

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SRC 04 016 52938

Office: TEXAS SERVICE CENTER

Date: OCT 01 2008

IN RE:

Petitioner:

Beneficiary:



Petition:

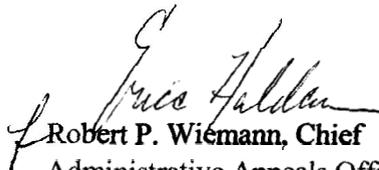
Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. A subsequent motion to reopen was denied, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.<sup>1</sup>

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized in the State of Texas, claims to be engaged in retail sales and operates a convenience store under the trade name Hornet's Nest. The petitioner claims that it is the affiliate of National Medical & General Stores, located in Bombay, India. The beneficiary was granted one year in L-1A classification in order to open a new office and the petitioner seeks to extend the beneficiary's stay for three additional years.

On June 9, 2004, the director denied the petition, concluding that the petitioner did not establish that (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) the petitioner had been doing business as required by the regulations for the previous year.

Counsel for the petitioner simultaneously filed a motion to reopen with the service center and an appeal with the AAO. On November 4, 2004, the director denied the motion. On appeal, counsel contends that the director's decision was erroneous, and submits a brief and additional evidence in support of the petitioner's claim that the beneficiary is primarily a manager and that the U.S. entity was doing business as required.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

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<sup>1</sup> On December 9, 2004, the director issued a notice of intent to revoke the initial new office petition upon which this extension request is based (Receipt No. SRC-02-247-51128). Specifically, the director found that the foreign entity affiliated with the petitioner was no longer doing business. The petitioner was afforded thirty days to rebut the director's findings and submit evidence in support of the petition's validity. The petitioner failed to respond, and the petition approval was revoked on March 30, 2005 pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The request for extension, filed on Form I-129 on October 21, 2003, indicated that the petitioner currently employed 5 persons. In a document entitled "Attachment to Form I-129L," the petitioner described the beneficiary's duties as follows:

[The beneficiary] will continue to be employed as the President of the Petitioner, and will be responsible for performing the following duties for the Petitioner; such duties to include: hiring and firing managers; supervising subordinate employees; reviewing an[d] analyzing sales data; establishing and implementing policies to manage and achieve marketing goals; review financial reports; review budgets and expense reports prepared by subordinate employees; managing the company; and overseeing marketing campaign developed by subordinate managers.

On January 21, 2004, the director requested additional evidence. Specifically, the director requested additional evidence to establish that the beneficiary will be employed in a managerial or executive capacity, including but not limited to a more detailed description of the beneficiary's duties and the percentage of time he spent on such duties; the number of subordinate employees he supervised as well as information regarding their positions; and an explanation regarding who provides the product sales and services for the company. The director also requested copies of the petitioner's Employer's Quarterly Tax Returns for the State of Texas for the fourth quarter of 2002 through the third quarter of 2003.

In a letter dated March 10, 2004, counsel for the petitioner submitted the following updated overview of the beneficiary's duties:

Ten percent (10%) of his time hiring and firing managers, and supervising subordinate employees; Fifteen Percent (15%) overseeing preparation of sales and inventory reports; Fifteen Percent (15%) reviewing an[d] analyzing sales data; Twenty Percent (20%) establishing and implementing policies to manage and achieve marketing goals; Fifteen Percent (15%) reviewing financial reports, and reviewing budgets and expense reports prepared by subordinate employees; Twenty Five (25%) managing the company and overseeing marketing campaign developed by subordinate managers.

The beneficiary is responsible for seeking additional business locations. In the performance of his duties, the Beneficiary receives minimum supervision from the Board of Directors, and the Beneficiary exercises wide discretion and latitude in the performance of his duties. The Beneficiary holds the highest authority within the organization and directly supervises a Store Operations Manager.

The AAO notes other than the addition of the percentages of time the beneficiary devotes to each stated duty, the description is virtually identical to the initial description submitted.

The petitioner also submitted a brief overview of the petitioner's other staff members, who were listed as follows: [REDACTED] Store Operations Manager, who oversaw [REDACTED], Assistant Manager/Cashier, who in turn oversaw [REDACTED] and [REDACTED], Cashiers.

The petitioner also submitted copies of his Employer's Quarterly Reports for the State of Texas for the quarters ending September 30, 2003 and December 31, 2003, demonstrating that all of the above-named employees were working for the petitioner during these periods. The return for the fourth quarter listed a fourth employee, A [REDACTED], who was not previously identified by the petitioner. In the month of October 2003, the petitioner had five employees, including the beneficiary.

On June 9, 2004, the director denied the petition, finding that the petitioner failed to establish that the beneficiary would be employed in a qualifying capacity. Specifically, the director found that the beneficiary was not supervising professional employees, and appears to be engaged in many of the day-to-day tasks of the business despite his title as president. On appeal, counsel contends that the beneficiary operated in a qualifying capacity by overseeing four persons, and further qualified as a function manager since he was responsible for reviewing and seeking additional retail locations.

Upon review, the AAO concurs with the director's findings.

Despite the petitioner's contentions that the beneficiary functioned in a qualifying position, the information submitted with regard to the beneficiary's position, coupled with the less-than-descript response to the request for additional evidence regarding the beneficiary's subordinates, suggests that the beneficiary performs most of the day-to-day duties required to operate the company, and thus could he not be considered primarily a manager or executive. The AAO will begin by examining the duties of the beneficiary.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In this matter, the petitioner provided a generic description of the beneficiary's duties with the initial petition. In the request for evidence, the director asked the petitioner to submit more detailed evidence outlining the duties delegated to the beneficiary and, in response the petitioner submitted a description of duties that was virtually identical to the one submitted in the initial letter of support, which the director had previously deemed insufficient. The main difference was that the petitioner broke down the list of duties into percentages to comply with the director's request.

The petitioner failed to submit a specific overview of the beneficiary's duties despite the director's request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Consequently, the description of duties on record, although it does provide a percentage breakdown, fails to specifically state the exact nature of the beneficiary's duties. More importantly, the petitioner fails to articulate the exact nature of the beneficiary's position with regard to the other staff members and the manner in which they interact. For example, the petitioner claims that the beneficiary is the president and the highest authority in the company, yet the description of duties is essentially a laundry list of non-specific tasks such as "supervising subordinate employees," "review[ing] financial reports," and "managing the company."

Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). In this matter, the recitation of the beneficiary's duties includes an abundance of tasks with no specific outline to clarify to what extent the beneficiary is engaged in each task. For example, "managing the company" is too vague to allow the AAO to determine the exact nature of the beneficiary's role in the company. The director afforded the petitioner an opportunity to supplement the record with a more specific description of the beneficiary's duties yet the petitioner failed and/or refused to do so. As a result, the AAO cannot determine the exact nature of the beneficiary's duties in the context of the

petitioner's stated business or determine whether his duties are primarily managerial or executive in nature. Moreover, considering that the petitioner's business involves the operation of a gas station and convenience store, the AAO is left to question the extent of managerial duties actual required for such an operation. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Because a number of the tasks listed in the recitation of duties include tasks traditionally not considered to be primarily managerial or executive, it is impossible to determine that the beneficiary functions solely as manager or executive of the company. For example, the petitioner claims that "the beneficiary is responsible for seeking additional business locations." Generally, a task such as this would appear to be marketing-related and thus non-qualifying; however, the petitioner provides no detail regard the extent of the beneficiary's involvement in these tasks. Instead, the petitioner merely concludes that the beneficiary is "the highest authority within the organization" and therefore is primarily a manger or executive. This claim, however, will not suffice. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Merely claiming that the beneficiary is performing in a qualifying capacity is insufficient for purposes of this analysis.

Another claim of the petitioner is that the beneficiary is responsible for supervising a subordinate staff of four persons. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

Though requested by the director, the petitioner did not provide the level of education required to perform the duties of its cashiers and operations manager (although the petitioner did indicate that two of the cashiers had high school educations). Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). It is generally presumed that a cashier at a convenience store would not require a baccalaureate degree as a prerequisite for employment.

The position of store operations manager, however, if truly a professional position, may in fact require additional education; however, the petitioner failed to address this request for information by the director so the requirements for this position cannot be determined based on the current record.

Thus, the petitioner has not established that these employees possess or require a baccalaureate degree, such that they could be classified as professionals. While the petitioner does contend that the store operations manager supervises subordinate staff members (i.e., the cashiers), the nature of the petitioner's business makes it difficult to determine the supervisory nature of the position. Since a convenience store/gas station normally operates seven days per week and often remains open eighteen to twenty-four hours per day, the petitioner has failed to establish that the store operations manager and the beneficiary are able to solely supervise employees and never engage in non-qualifying tasks. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The petitioner also contends that the beneficiary alternatively is a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the beneficiary is claimed to supervise staff, which casts doubt upon the validity of the petitioner's claim that he is employed as a function manager. Simultaneously, the petitioner has not provided evidence that the beneficiary manages an essential function, as it has neither identified the alleged function nor clearly described the beneficiary's duties associated with managing a function.

On appeal, counsel relies on a number of precedent decisions in support of the petitioner's eligibility. First, the AAO notes that counsel relies on *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.5 (5th Cir. 1989), and *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS), or *Mars Jewelers, Inc.*, where the district court found in favor of the plaintiff. With respect to *Mars Jewelers*, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec.

715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In both *National Hand Tool Corp.* and *Mars Jewelers, Inc.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the beneficiary is not primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel also cites *Gasboy Texas, Inc. v. Upchurch*, 2004 WL 396257 (N.D. Tex.), in which the United States District Court found that an AAO decision was not due deference because the administrative record was "shoddy" and haphazardly assembled and because the AAO decision did not address a letter submitted by the petitioner. Without discussing the applicable statute and regulations, the court summarily concluded that the "president and general manager" of a gas station/convenience store qualified as a manager and executive under "8 C.F.R. § 214.2(l)(ii) [sic]." However, the *Gasboy* decision does not stand for the proposition that all gas station managers qualify as a manager or executive under the Act; rather, the court's decision was based on an analysis of a specific deficiency in the administrative record. Other than noting that the petitioner in the cited case operated a business similar to the business operated by the petitioner in the instant matter, counsel did not establish that the facts of the two cases are analogous. Additionally, in contrast to the broad precedential authority of the case law of a United States circuit court and as stated above, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715. Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. Counsel's reference to the *Gasboy* decision is not persuasive.

The fact that the beneficiary oversees cashiers at a convenience store does not establish that the beneficiary will not be required to engage in day-to-day tasks necessary to operate the business. The petitioner has not set forth the hours of operation of the store or the hours during which the employees work. According to the quarterly wage reports, however, none of the other employees earn more than

\$3250 in a three-month period, thereby suggesting that some are part-time employees and that the beneficiary would fill in for them when they are not on the schedule. Absent additional evidence, the AAO is unable to conclude with certainty that the beneficiary refrains from engaging in non-qualifying tasks.

A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Moreover, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation only one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

The second issue in this matter is whether the petitioner has been doing business as required by the regulations for the previous year. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines the term “doing business” as “the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.”

In this matter, the petitioner claims that it is engaged in retail sales; namely, the operation of a convenience store and gas station. The director denied the petition, finding that the petitioner had failed to satisfy the regulatory requirements for doing business.

With the initial petition, insufficient evidence of the petitioner’s business practices was submitted. Consequently, in the request for evidence issued on January 21, 2004, the director requested documentation establishing that the petitioner had been doing business during the previous year as required by the regulations. In the response dated March 10, 2004, counsel states in bold print that **“the petitioner started conducting business on July 1, 2003.”**

Based on this admission and upon review of the evidence submitted, the AAO concludes that the petitioner failed to demonstrate that it had been doing business during the previous year. The record indicates that the beneficiary was granted a one-year period of stay from October 23, 2002 to October 23, 2003 to open a new office. The record further indicates that the petitioner would engage in retail sales; namely, operating a convenience store. However, there is no indication of any business activities whatsoever until July 2003, or nine months after the initial petition’s approval. In addition, there is minimal documentation or information regarding the activities of the beneficiary and the petitioner during the time period prior to July 2003.

Based on this limited information, it is clear that the petitioner was not doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The record is devoid of an explanation as to what the petitioner did between October 2002 and July 2003, and further lacks any explanation or documentation regarding other activities engaged in by the petitioner to promote its business during this period. The fact that the petitioner did not commence operations until July 2003, three months prior to the visa expiration, does not excuse the petitioner from meeting the regulatory requirements.

Moreover, the record reflects that the U.S. entity did not secure a commercial lease until July 1, 2003, nearly nine months after the approval of the original new office petition. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired sufficient physical premises to commence doing business. In the present matter, either the petitioner did not comply with this requirement, misrepresented that they had complied, or the director committed gross error in approving the petition without evidence of the petitioner's physical premises.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of a new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) require the petitioner to demonstrate that it has been doing business for the previous year. In the present matter, the evidence submitted at the time of filing confirmed that the petitioner had not been conducting business as required. For this additional reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.